In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1183

PAUL C. EDWARDS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 519 F. 2d 1137. The opinion of the district court is not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. B) was entered on September 17, 1975, and the petition for rehearing (Pet. App. C) was denied on January 20, 1976. The petition for a writ of certiorari was filed on February 19, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals correctly affirmed the district court's finding that government physicians had not been negligent in treating petitioner.

STATEMENT

While in his fourteenth month of confinement in the Federal Correctional Institution at Texarkana, Texas, petitioner suffered a stroke which left him partially paralyzed on the left side (Pet. App. 1a). For several years prior to his incarceration, petitioner had suffered from diabetes mellitus, which was treated by periodic insulin injections and dietary control. After his release from prison, petitioner instituted this action against the United States under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.* The complaint alleged that the negligent failure of the prison doctors to treat his diabetes in a proper manner had been the proximate cause of his stroke (C.A. App. 3-7).[1]

Following a bench trial in the United States District Court for the Eastern District of Texas, the case was dismissed with prejudice. The court found that the evidence was insufficient to establish either that the government physicians had been negligent in caring for petitioner's illness[2] or that their treatment had been the proximate cause of his stroke (C.A. App. 39-40).

The court of appeals affirmed (Pet. App. 1a-8a), one judge dissenting (Pet. App. 8a-18a). The court found that it need not reach the question whether the district court had erred in finding no causal connection between the alleged acts of negligence and petitioner's stroke (Pet. App. 3a). Nor did it find it necessary to consider

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[1]"C.A. App." refers to the appendix in the court of appeals.

[2]Concerning petitioner's two primary allegations of negligence, the court specifically found (C.A. App. 39):

> [N]ot a single medical witness was willing to say that the reduction of insulin dosage constituted a breach of professional standards. Further, there was no evidence whatsoever on which the court could reach the conclusion that failure to afford diabetics a separate diet in the cafeteria is patently negligent.

petitioner's argument that the district court applied an overly narrow geographic standard in determining the appropriate standard of care against which to measure the performance of the government physicians under Texas law (Pet. App. 3a, 7a). Instead, the court held that (Pet. App. 7a-8a; emphasis in original):

> On this record * * * [w]e find nothing in [the testimony of petitioner's expert] or in the testimony of the government's experts to establish a deviation from *any* professional standard of care.

ARGUMENT

In this Court, petitioner renews his contention (Pet. 8-9) that the district court misapplied Texas tort law by adopting a local, geographic definition of the community to be considered in deriving the appropriate standard of care. He also contends (Pet. 11) that the appropriate standard of medical care for federal prisoners should be defined on a nationwide basis. But in this case, it is irrelevant whether the proper standard is that of the local community or of the nation generally. As the court of appeals correctly determined, the treatment provided petitioner by the government physicians was not negligent under "*any* professional standard of care." Since petitioner has not attempted to show that this conclusion was erroneous, further review of this issue is foreclosed. Cf. *Graver Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275.

In any event, the district court was correct in applying a local standard. It is well settled that in suits brought under the Federal Tort Claims Act, federal courts must apply the law of the place where the act or omission occurred, including its definition of negligence, in determining the liability of the United States. 28 U.S.C. 1346(b); *United States* v. *Muniz*, 374 U.S. 150; *Richards* v. *United States*,

369 U.S. 1. In *United States* v. *Muniz, supra,* 374 U.S. at 161-162, this Court specifically stated that in suits by federal prisoners for injuries suffered because of the negligence of government employees, the law of the situs controls. Indeed, the Court noted that "[e]ven a matter such as improper medical treatment can be judged under the varying state laws of malpractice * * *." *Id.* at 162. The district court here correctly followed *Muniz.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

APRIL 1976.